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**IN THE
COURT OF APPEALS OF INDIANA**

TIMOTHY COOPER,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A02-0608-CR-714
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Jeffrey Marchal, Commissioner
Cause No. 49G06-0603-FB-060134

March 22, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Timothy Cooper (“Cooper”) appeals his conviction for battery as a Class C felony, arguing that the evidence is insufficient to support it. Finding that the State presented sufficient evidence to support Cooper’s conviction, we affirm the judgment of the trial court.

Facts and Procedural History

Cooper was romantically involved with Toni Nield (“Nield”) for approximately one year, and the two lived together in Cooper’s Indianapolis apartment. Before ending her relationship with Cooper, Nield became romantically involved with Robert Morris (“Morris”), a long time friend of Cooper. Morris lived with Carol Browning (“Browning”), who was romantically involved with Cooper in the late 1980’s and has a daughter with Cooper. After learning of Nield and Morris’s relationship, Cooper became upset and ended his relationship with Nield. As a result, Nield moved out of Cooper’s apartment and into Morris and Browning’s apartment.

On the evening of March 15, 2006, after consuming numerous alcoholic beverages, Nield and Morris went to their bedroom and eventually fell asleep. Sometime later that evening, Cooper entered the bedroom that Morris and Nield were sleeping in and struck Morris in the eye with his fist. The commotion caused by Cooper and Morris’s altercation woke Nield up. After Nield awoke and sat up, Cooper kicked her in the face. The kick to Nield’s face knocked Nield backward, and according to Nield, “everything was kind of blurry after that.” Tr. p. 20. Cooper then fled from the bedroom,

and Morris followed after him. As a result of Cooper kicking Nield, Nield's eye swelled shut, her face became swollen, and she spent five days in a hospital.

Thereafter, the State charged Cooper with the following: Count I, battery of Toni Nield as a Class C felony;¹ Count II, domestic battery of Toni Nield as a Class A misdemeanor;² Count III, battery of Richard Morris as a Class A misdemeanor;³ and Count IV, trespass as a Class A misdemeanor.⁴ On the first day of Cooper's jury trial, the State amended the charging information to add Count V, aggravated battery of Toni Nield, a Class B felony.⁵ The jury found Cooper guilty of Counts I, II, and III but acquitted him of Counts IV and V.

The trial court merged Count II with Count I to ensure that a separate judgment of conviction and sentence was not imposed. As a result, the trial court imposed a six-year sentence for Class C felony battery in Count I and a concurrent one-year sentence for Class A misdemeanor battery in Count III. Cooper now appeals.

Discussion and Decision

On appeal, Cooper contends that the evidence is insufficient to support his convictions for Class C felony battery and Class A misdemeanor domestic battery against Nield. *See* Appellant's Br. p. 2. As an initial matter, we note that even though the jury found Cooper guilty of Class A misdemeanor domestic battery, the trial court properly

¹ Ind. Code § 35-42-2-1(a)(3).

² Ind. Code § 35-42-2-1.3(a).

³ I.C. § 35-42-2-1(a)(1)(A).

⁴ Ind. Code § 35-43-2-2(a).

⁵ Ind. Code § 35-42-2-1.5.

merged it with Class C felony battery. As such, there is no domestic battery conviction for us to review. Although Cooper's brief focuses on the domestic battery conviction, we will nevertheless address his contention that the evidence is insufficient to support his conviction for Class C felony battery.

"Upon a challenge to the sufficiency of evidence to support a conviction, a reviewing court does not reweigh the evidence or judge the credibility of the witnesses, and respects the jury's exclusive province to weigh conflicting evidence." *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005) (internal quotations omitted). We must consider only the probative evidence and reasonable inferences supporting the verdict. *Id.* We must affirm if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. *Id.* To sustain a conviction for battery as a Class C felony in this case, the State was required to prove that Cooper knowingly or intentionally touched Nield in a rude, insolent, or angry manner that resulted in serious bodily injury. *See* Ind. Code § 35-42-2-1(a)(3). Cooper does not deny that he kicked Nield, but he argues that the evidence is insufficient to prove that he did so intentionally. *See* Appellant's Br. p. 8. We disagree.

Intent is a mental state and can be inferred from circumstantial evidence. *Profitt v. State*, 817 N.E.2d 675, 680 (Ind. Ct. App. 2004), *trans. denied*. The uncorroborated testimony of the victim is sufficient to sustain a criminal conviction. *Johnson v. State*, 837 N.E.2d 209, 214 (Ind. Ct. App. 2005), *trans. denied*. Here, Nield testified, "I sat up, and then I got a boot in my face real hard. It knocked me backwards and I, everything was kind of blurry after that." Tr. p. 64. In addition, Morris testified, "[Nield] jumped

up, and [Cooper] kicked [Nield] in the face.” *Id.* at 113. Finally, as a result of Cooper kicking Nield, Nield’s eye swelled shut, her face became swollen, and she spent five days in a hospital. Intent can be inferred from this evidence. Cooper simply requests that we reweigh the evidence, which we will not do. *See McHenry*, 820 N.E.2d at 126. There is sufficient evidence to support Cooper’s conviction for Class C felony battery.

Affirmed.

BAILEY, J., and BARNES, J., concur.